IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1894 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHALAL LALLURAM JANI

Versus

COLLECTOR GANDHINAGAR

Appearance:

1. Special Civil Application No. 1894 of 2003

MR ND NANAVATI with MR TUSHAR MEHTA and
MR SUNIL S JOSHI for Petitioner Nos.1-1/2-1/2
MR SIRAJ GORI, AGP for Respondent Nos.1-2
MR MIHIR JOSHI with MR DHAVAL BAROT for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of Order: 25/06/2003

ORAL JUDGEMENT

1. Heard Mr.N.D.Nanavati, learned senior counsel appearing with Mr.Tushar Mehta and Mr.Sunil Joshi for the petitioners. Upon notice being issued, Mr.Mihir Joshi, the learned advocate appears for Mr.Dhaval Barot on

behalf of the respondent No.3 and Mr.Siraj Gori, the learned A.G.P. for respondent Nos.1 and 2. As the pleadings are complete the matter has been heard finally with the consent of the parties.

2. RULE. Mr.Siraj Gori, the learned A.G.P. appearing on behalf of respondent Nos.1 and 2 and Mr.Mihir Joshi, the learned advocate appearing on behalf of the respondent No.3, waive service of rule.

3. This petition stated to have been filed under Articles 226 and 227 of the Constitution of India seeks following reliefs :

"a. Be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other writ order or direction quashing and setting aside the order of grant of the said lands dated 28.10.2002 (Annexure-A) to the opponent no.3 herein and further be pleased to quash and set aside.

b. Be pleased to issue the writ of mandamus or the writ in the nature of mandamus or any other writ order or direction directing the opponent no.1 and 2 to re grant the said land to the petitioners according to the notification dated 16.3.82 (Annexure-E) issued by the Revenue Department of the State of Gujarat. "

4. The case of the petitioners is that the order dated 28-10-2002 and consequential order dated 03-01-2003 are illegal, contrary and the action of the opponents with special reference to respondent Nos.1 and 2 is required to be quashed and set aside for the grounds stated in the petition. It is the case of the petitioners that the lands in question bearing Revenue Survey No.1505/2 admeasuring 1 Acre 13 Gunthas situated within the revenue limits of Mansa of Vijapur Taluka was cultivated by the father of the petitioners and after merger of Mansa State in the Union of India, the said land was granted to the father of the petitioners on new tenure basis by charging necessary occupancy price at the relevant point of time. It is further stated in the petition that in 1982, the Dy. Collector, Mehsana ordered that the said land alongwith adjoining land bearing Revenue Survey No.1505/1 be converted into the old tenure land from the new tenure originally granted.

However, in 1984 the Collector, Mehsana vide order dated 30-07-1984 set aside the said order and remanded the matter to the Dy. Collector for hearing the parties afresh.

5. Thereafter the Dy. Collector after hearing the parties rejected the application vide order dated 28-08-1990 holding that the applicants had committed breach on conditions since the land had been sold by the petitioners to deceased Somaji Becharji by a sale deed without prior permission of the competent authority; and also on the ground that no cultivation was in fact being carried on in both the plots of land; and further that the lands in question were being utilized by one Mohanbhai Prajapati and 15 others for carrying on business of manufacturing cement pipes on the said lands. That the said persons had been inducted and handed over possession of the lands in question by the heirs of deceased Somaji Becharji. Accordingly lands bearing Survey Nos.1505/1 and 1505/2 were ordered to be forfeited in favour of the Government. The said order dated 28-08-1990 was carried by way of a Revision Application before the Secretary (Appeals), Department of Revenue, who was pleased to reject the said Revision Application vide order dated 30-03-1992 and thus the action of the Dy. Collector forfeiting the lands in favour of the Government stood confirmed. The challenge of the petitioners before this Court by way of Special Civil Application No.946 of 1993 also failed as the said writ petition was summarily rejected vide order dated 11-02-1993.

6. There upon the notice under Section 68 read with Section 79-A of the Bombay Land Revenue Code came to be issued by the Dy. Mamlatdar, Mansa for taking possession of the lands in question. The said notice was challenged by the persons who were in occupation of the lands and ultimately upon the Gujarat Revenue Tribunal dismissing the appeal vide order dated 31-12-1997, the Government took over the possession of the lands from the said persons.

7. It appears that in the meantime the petitioners on 29-06-1996 executed irrevocable power of attorney in favour of one Shri Joitabhai Hathibhai Chaudhary, who has preferred this petition on the basis of the said power of attorney. On 16-12-1996, the said power of attorney holder, on behalf of the petitioners, preferred an application seeking regrant of the land in question i.e. the land bearing Survey No.1505/2. It was stated in the said application that the petitioners had come in

possession of the land by way of inheritance upon death of late Shri Nathalal Lalluram Jani and as there was no other means of livelihood, the petitioners be re-granted the land on the basis of the policy of the government based on various resolutions including Resolution dated 16-03-1982. The said application came to be rejected vide order dated 16-12-1998 which was conveyed to the petitioners by communication dated 07-01-1999.

8. It is submitted by Mr.Nanavati that the action of the respondent - government in granting the land to a proposed Co-operative Housing Society is mala fide because :

(1) The members of the said Co-operative Society include the 16 persons who had been illegally inducted and were carrying on business of manufacturing cement pipes on the lands in question;

(2) The lands were allotted as agricultural lands and the same are being disposed off for a nonagricultural purpose i.e. in favour of the Housing Society for construction of residential premises;

(3) Though the application of the petitioners for regrant was pending before the government, allotment has been made in favour of respondent No.3 ignoring the Resolution dated 16-03-1982, with special reference to Clause 4(2) of the said Resolution wherein necessary factors are specified for determining whether the lands should be regranted;

(4) Referring to Rule 42 of the Bombay Land Revenue Rules, 1972 it was submitted that the lands should not be disposed off by the government ignoring the specific requirement of the said Rule;

(5) The price at which the lands have been allotted to respondent No.3 is not the market price;

(6) It was also submitted that the petitioners, to show their bona fide, are ready and willing to deposit a sum of Rs.50 lacs towards the price of the said lands and the respondent - government be

directed to hold the public auction after the aforesaid allotment to respondent No.3 is cancelled.

In support of the contentions raised Mr.Nanavati placed reliance upon decision of the Supreme Court in the case of Haji T.M.Hassan Rawther Vs. Kerala Financial Corporation, A.I.R. 1988 SC 157.

9. As against this, it was submitted by Mr.Mihir Joshi appearing on behalf of the respondent No.3 that the petitioners are seeking equity but they are not entitled to the same in light of their conduct. It was submitted that though the application of the petitioners seeking regrant of the lands in question was rejected as far back as on 16-12-1998 and was communicated in January 1999, the petitioners have approached the Court by way of this petition filed only on 27-02-2003. In these circumstances it was submitted that the petition was liable to be rejected as being barred by delay and laches and also on the ground of acquiescence. It was submitted that in the intervening period third parties' rights have come into existence and the same cannot be defeated in light of the conduct of the petitioners. That respondent No.3 was allotted the lands on 28-10-2002 and was directed to make payment of a sum of Rs.37,32,600/= within a period of 30 days. That respondent No.3 had in fact made the payment on 08-01-2003 and by virtue of this unwarranted litigation the respondent No.3 is not being put in possession though the requisite payment of a large sum of money has already been made. It was further submitted by Mr.Joshi that the petitioners had no right, title and interest in the lands in question since 1968 when the lands had been sold by a registered document in favour of the heirs of Somaji Becharji and hence, the petitioners had no locus standi either to seek regrant of the lands in question or to approach this Court. It was, therefore, submitted that the petition was required to be rejected.

10. On 19-06-2003 this Court had directed the respondent - State Government to produce original files containing:

(1) papers relating to the decision and basis for not accepting the application for regrant made by the petitioners; and

(2) the papers relating to the grant of lands in favour of respondent No.3.

This order was necessitated in light of the

submissions and dispute raised on behalf of the petitioners on the one hand and respondent No.3 on the other hand. Mr.Gori, the learned A.G.P., has placed today before the Court the necessary files for perusal.

11. It is contended by Mr.Gori that the decision not to regrant the lands to the petitioners is duly supported by reasons recorded in the notings though they may not be reflected in the communication dated 07-01-1999 and only for this minor lapse, the decision cannot be held to be bad in law. It is also submitted that the communication dated 07-01-1999 was duly dispatched as could be seen from the Dispatch Register as well as other documentary evidence maintained in normal course of events by the State Government and hence, the contention of the petitioners to the effect that the order rejecting the application for regrant of lands had not been communicated was required to be rejected. It was also submitted by Mr.Gori that the decision to allot the lands in favour of respondent No.3 has also been arrived at after taking into consideration the necessary requirements in accordance with law and after observing the requisite formalities like obtaining valuation from District Valuation Committee, etc. It was, therefore, submitted that the petition had no basis and was required to be rejected.

12. Having heard the learned advocates for all the parties and after perusing the original files produced by the State Government it is amply clear that this petition requires to be rejected for the reasons that follow hereinafter.

13. It is pertinent to note that father of the petitioners late Nathalal Lalluram expired on 05-05-1968 and thereafter his widow i.e. late Smt. Rukshmaniben came into possession of the lands in question on 13-05-1968 as per Entry No.6923 made in the revenue record. The said entry has been confirmed on 14-12-1968. Late Rukshmaniben sold the lands by a registered document dated 12-11-1968 in favour of Somaji Becharji for a consideration of Rs.1,000/=. These facts are not in dispute. In fact, these facts are fortified from averments in Regular Civil Suit No.2 of 2003 filed by the heirs of late Somaji Becharji in the Court of Civil Judge (S.D.), Mansa wherein the present petitioners are shown as respondent Nos.4 and 5. In the said suit it is further stated that the said respondents viz. respondent Nos.4 and 5 are only joined as formal parties as the said respondents were former owners of the lands in question. In the said suit the plaintiff has sought relief against

the State Government on an identical ground i.e. that the application made by the plaintiffs for regrant of the lands forfeited by the Government, being Survey Nos.1501/1 and 1505/2, has been wrongly rejected and further has been wrongly granted in favour of third party (respondent No.3 herein). The said suit is based on the same grounds raised in the present petition. It is pertinent to note that the said suit was filed some time in January 2003 while the petition has been preferred in February 2003. Therefore, on the short ground that the petitioners were not even in possession of the lands in question when the order of forfeiture came to be made this petition requires to be rejected.

14. Apart from this it is apparent from the original files produced by the respondent - government that the decision not to regrant the lands to the petitioners has been arrived at after taking into consideration all necessary and relevant factors by the competent authority and no fault can be found so far as the said decision is concerned. It is well settled position in law that even if on the same set of facts and circumstances it was possible to take a different view of the matter, that by itself is not sufficient to permit this Court to exercise extraordinary jurisdiction and quash the decision which is otherwise substantiated by facts and material on record.

15. It is true that the communication dated 07-01-1999 does not mention the reasons for rejecting the application for regrant made by the petitioners. However, that factor alone is not sufficient to interfere in the decision arrived at by the State Government in light of the fact that the reasons are found in the notings made in the original file and as stated hereinbefore, once the reasons are such which could be arrived at on the basis of facts and circumstances and evidence on record, it is not possible for this Court to intervene, even if a different view could be taken. A word of caution. The State Government would be well advised to take care to communicate the reasons or atleast a gist of the reasons for the decision taken by it so as to avoid unnecessary litigation on the ground that a decision has been arrived at without proper application of mind.

16. Coming to the contention as regards non-service of the order rejecting the application it is apparent that the said contention is also not tenable as can be seen from the original record produced by the respondent State Government. Communication dated 07-01-1999 has

been dispatched on 11-01-1999 and the entry is found in the outward dispatch register at Sr. No.1934 of 1999. Requisite postage has also been shown to have been affixed and debited in accounts in the normal course of business conducted by the Office of Mamlatdar and there is nothing to disbelieve the same. In these circumstances the say of the petitioners to the effect that the petitioners have not been communicated the order of rejecting the application for regrant cannot be accepted.

17. The stand on behalf of the petitioners and the offer to deposit a sum of Rs.50 lacs so as to permit the petitioners to participate in a auction, open to public, which may be held if the impugned orders granting the lands in favour of respondent No.3 are cancelled, sounds attractive at first blush. However, when the facts and the basis which have gone into decision making process for allotting the lands in favour of respondent No.3 are taken into consideration it is apparent that no interference is called for. The respondent authorities have allotted the lands in favour of respondent No.3 Co-operative Society (proposed) on the basis of market price fixed by the District Valuation Committee and after taking into consideration government policy stated in Resolution dated 21-05-2001 as well as other resolutions referred to in paragraph 14 of the affidavit-in-reply. Hence, reliance on provisions of Rule 42 of the Bombay Land Revenue Rules, 1972 and the decision of the Apex Court in case of Haji T.M. Hassan Tawther (supra) will not assist the petitioners. Once the decision has been arrived at on the basis of facts and evidence on record and the said decision is a reasonable decision it is not open to this Court to overturn the same merely because it may be possible to take a different view on the same set of facts and evidence. There is no material on record to show that any extraneus consideration has prevailed in the decision making process and if this be so, it is not possible to find any infirmity in the decision.

18. The contentions raised on behalf of respondent No.3 by Mr.Mihir Joshi as regards the conduct of the petitioners in relation to service of notice are not being dealt with. Suffice it to state that the said events reflect poorly on the petitioners, even if the said sequence of events may not go to show any mala fides of the petitioners.

19. In light of what is stated hereinbefore, this petition fails and is accordingly rejected. Rule discharged. There shall be no order as to costs.

Sd/-

[D.A.MEHTA, J]

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